

**United States Department of Labor
Employees' Compensation Appeals Board**

D.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
East Orange, NY, Employer**

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**Docket No. 09-1174
Issued: December 3, 2009**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 31, 2009 appellant filed a timely appeal of the April 18 and December 15, 2008 merit decisions of the Office of Workers' Compensation Programs finding that she did not sustain an injury while in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that she sustained a neck injury in the performance of duty on November 6, 2007 as alleged.

FACTUAL HISTORY

On November 6, 2007 appellant, then a 33-year-old rural carrier associate, filed a traumatic injury claim alleging that she hurt her neck while sliding a tray over on that date. She stopped work on the date of injury.¹ A November 6, 2007 medical report of Joann Capuano, a

¹ Appellant returned to full-duty work on February 21, 2008. She resigned from the employing establishment effective February 29, 2008 because she did not want to reinjure herself in light of the work she performed.

nurse practitioner, provided a history that appellant felt her neck crack while moving a tray of mail on that date. Appellant suffered from cervical spine and upper back pain and spasm. A November 6, 2007 disability certificate which contained the typed name of Dr. John V. Celentano, a Board-certified family practitioner, stated that appellant could return to work on November 12, 2007.

A November 28, 2007 x-ray report of Dr. Stuart G. Katz, a Board-certified radiologist, provided negative results related to appellant's cervical spine.

A January 28, 2009 request form of William M. Herro, a physical therapist, sought authorization for the treatment of appellant's cervicocranial and cervicobrachial syndrome and thoracic spine pain.

Reports dated January 13, 2007 to February 20, 2008 of Dr. Patricia R. Grant, a Board-certified anesthesiologist, provided a history that on November 6, 2007 appellant felt a crack in her neck while moving a tray. These reports and Dr. Grant's January 11, 2008 prescription stated that appellant suffered from cervicocranial and cervicobrachial syndrome and thoracic spine pain.

In treatment notes and a report dated January 25 to March 3, 2008, Mr. Herro addressed the treatment of appellant's neck, bilateral shoulders and back.

In a November 6, 2007 report, Ms. Capuano advised that appellant demonstrated muscle spasm and tenderness on physical examination. She diagnosed a cervical sprain.

By letter dated March 13, 2008, the Office advised appellant that the evidence submitted was insufficient to establish her claim. It requested additional factual and medical evidence, including a rationalized medical report from an attending physician which described the history of her current and prior work and nonwork-related injuries to similar parts of the body, a firm diagnosis, results of examination and tests, symptoms, treatment provided, prognosis, period and extent of disability and an opinion on whether the November 6, 2007 incident caused or aggravated her claimed condition.

In a January 12, 2008 report, Dr. Grant reiterated her prior diagnoses of cervicocranial and cervicobrachial syndrome and thoracic spine pain.

By decision dated April 18, 2008, the Office denied appellant's claim. It found the evidence insufficient to establish that the November 6, 2007 incident occurred at the time, place and in the manner alleged. The evidence was also insufficient to establish an injury causally related to the claimed incident. On May 14, 2008 appellant requested an oral hearing before an Office hearing representative.

In a November 13, 2007 report, Ms. Capuano advised that appellant's neck pain had worsened.

In a January 12, 2007 report, Dr. Grant stated that appellant sustained a cervical sprain. In a May 8, 2007 report, she reviewed appellant's five-month history of cervicobrachial pain and social and family background. Dr. Grant also reviewed a normal March 22, 2007 magnetic

resonance imaging (MRI) scan and x-rays of the cervical spine. She reported essentially normal findings on physical and neurological examination with the exception of restricted range of motion of the neck. Dr. Grant diagnosed cervical spondylosis and low back pain. In a November 4, 2007 treatment note, she reviewed a history that appellant's bilateral cervicobrachial pain, numbness and tingling were secondary to a January 10, 2007 work-related lifting injury. In a February 20, 2008 report and prescription, Dr. Grant released appellant to return to full-duty work on February 21, 2008.

A January 18, 2007 treatment note contained an illegible signature and stated that appellant sustained cervical degenerative disc disease. Treatment notes dated January 12 to November 29, 2007 which contained illegible signatures and an unsigned January 12, 2007 report addressed negative x-ray test results and the need for additional diagnostic testing of appellant's cervical spine and physical therapy treatment. A March 16, 2007 report contained an illegible signature and diagnosis.

A January 17, 2007 x-ray report of Dr. Americo Fiore, a Board-certified radiologist, suspected early discogenic arthritic changes at C5-6. A March 22, 2007 MRI scan report of Dr. Ron Mark, a Board-certified radiologist, provided normal test results regarding appellant's cervical spine.

In a November 13, 2008 report, Dr. Celentano reviewed his treatment of appellant during the past year for cervicobrachial pain and headaches attributable to a January 2007 work-related pulling/lifting injury. Appellant responded positively to acupuncture that was performed in November 2007. Dr. Celentano advised that her symptoms had been intermittent since that time and had become exacerbated. Appellant's symptoms improved with treatment. Dr. Celentano advised that, during a November 12, 2008 examination, appellant complained about an exacerbation of pain. He reported restricted range of motion of the cervical spine bilaterally. Appellant had positive spasms of splenius capitis and cervicus and paraspinal muscles. She continued to experience frequent headaches that were aggravated with pulling, bending or lifting. Dr. Celentano opined that, although appellant's condition had improved since her initial treatment last year, she still continued to have intermittent flare-ups of her symptoms. He expected that her situation would be permanent and was causally related to the January 2007 injury.

In an undated narrative statement, appellant stated that around 11:30 a.m. on November 6, 2007 she slid a tray of mail over to the right. She was not sure how much it weighed. Appellant informed Celina Lopez, a supervisor, about the incident. Appellant had neither experienced any similar disabilities nor filed a workers' compensation claim prior to filing the instant claim.

By decision dated December 15, 2008, an Office hearing representative affirmed the April 18, 2008 decision. The evidence was sufficient to establish that the November 6, 2007 incident occurred as alleged. However, the medical evidence was insufficient to establish that appellant sustained an injury causally related to the accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of her claim, including the fact that the individual is an "employee of the United States within the meaning of the Act, that the claim was filed within the applicable time limitation period of the Act, that an injury was sustained while in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury."³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

To establish that an injury was sustained a traumatic injury in the performance of duty the Office must first determine whether fact of injury is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.⁵ Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁶ Neither the fact that appellant's condition became apparent during a period of employment nor her belief that the condition was caused by her employment, is sufficient to establish a causal relationship.⁷

ANALYSIS

The Office accepted that appellant slid a tray of mail on November 6, 2007 while working as a rural carrier associate at the employing establishment. The Board finds, however, that the medical evidence submitted is insufficient to establish that her diagnosed neck conditions were caused or aggravated by the November 6, 2007 employment incident.

Dr. Celentano's November 6, 2007 disability certificate stated that appellant could return to work on November 12, 2007. He did not provide any medical rationale explaining how or why appellant's total disability for work was caused or contributed to by the accepted

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Gary J. Watling*, 52 ECAB 278 (2001).

⁵ *Id.*

⁶ *Solomon Polen*, 51 ECAB 341 (2000).

⁷ *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).

employment incident. Dr. Celentano's November 13, 2008 report found that appellant had positive spasms of splenius capitis and cervicus and paraspinal muscles. He further found that she continued to experience frequent headaches that were aggravated with pulling, bending or lifting. Dr. Celentano opined that appellant's condition was permanent and causally related to a January 2007 work-related pulling/lifting injury. However, he did not specifically address how or why the accepted November 6, 2007 employment incident caused or contributed to the diagnosed cervical and headache conditions. Dr. Celentano attributed appellant's conditions to a work-related injury that has not been established by the record. Appellant stated that she had not filed a workers' compensation claim prior to the instant claim. The Board finds that Dr. Celentano's disability certificate and report do not constitute probative medical evidence.

The diagnostic test reports of Dr. Katz, Dr. Mark and Dr. Fiore do not address how appellant sustained a neck condition that was caused or contributed to by the accepted employment incident. Further, Dr. Fiore's finding which "suspected" early discogenic arthritic changes at C5-6 is speculative in nature and, thus, is of limited probative value.⁸ The Board finds that the physicians' reports are insufficient to establish appellant's claim.

Dr. Grant's January 12, 2007 to February 20, 2008 reports and treatment note, and January 11, 2008 prescription stated that appellant sustained cervicocranial and cervicobrachial syndrome, thoracic spine and low back pain, a cervical sprain and cervical spondylosis. However, she did not address how the diagnosed conditions were caused or contributed to by the accepted November 6, 2007 employment incident. Dr. Grant's February 20, 2008 prescription which stated that appellant could return to full-duty work on February 21, 2008 failed to provide confirmation of any diagnosis or an opinion as to whether her disability was caused or contributed to by the accepted employment incident. The Board finds that Dr. Grant's reports, treatment note and prescriptions do not constitute probative medical evidence.

The request form, treatment notes and reports of Mr. Herro, a physical therapist, and Ms. Capuano, a nurse practitioner, have no probative medical value in establishing appellant's claim. Neither a physical therapist⁹ nor a nurse practitioner¹⁰ is considered to be a physician as defined under the Act.

The treatment notes and reports which contained illegible signatures and a diagnosis and the unsigned report do not constitute probative medical evidence as this evidence lacks any indication that it was completed by a physician.¹¹

The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained a neck injury causally related to the accepted November 6, 2007 employment incident. Appellant did not meet her burden of proof.

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.3(g) (April 1993).

⁹ 5 U.S.C. § 8102(2). *See also David P. Sawchuk*, 57 ECAB 316 (2006).

¹⁰ *Paul Foster*, 56 ECAB 208 (2004).

¹¹ *See D.D.*, 57 ECAB 734 (2006); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a neck injury on November 6, 2007 as alleged.

ORDER

IT IS HEREBY ORDERED THAT the December 15 and April 18, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 3, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board